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STATES OF

Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/011,910	02/17/98	ABRIGNANI	S 0336.001

HM12/1124

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EXAMINER	
BRUMBACK, B	
ART UNIT	PAPER NUMBER
1642	15

DATE MAILED: 11/24/00

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

### ADVISORY ACTION

☐ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed 11-13-2000 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:

- a) ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b) ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c) ☐ They raise the issue of new matter. (See Note).
- d) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e) ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See attached

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 2-4, 6-14, and 17

However;

- ☒ Applicant's response has entered in appeal overcome the following rejection(s): See attached

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because See attached.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

Art Unit: 1642

**DETAILED ACTION**

***Attachment to Advisory Action***

**Item # 1:**

1. Applicant's proposed amendments to claims 11, 12, 13, and 17 would raise new issues under claim objections. The amendments would result in improper syntax of the claims, which would then read "...capable of specifically binding to E2 hepatitis C virus".

2. Applicant's comments regarding reference C3 are acknowledged; however, if applicant wishes the reference to be considered, a copy of the reference must be provided.

**Item # 3:**

2. If entered, applicant's proposed amendments would overcome the objection to the disclosure as lacking an abstract and the rejection of claims 2-10 for recitation of "functionally equivalent variant or fragment thereof", "functionally unglycosolated", "hyperexpression" (claim 6), at least one step of hydrophobic interaction chromatography, at least one step of acetone precipitation, and the binding step.

Also, if entered, applicant's arguments would overcome the rejection of claim 17 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mehta et al.

Art Unit: 1642

**Item # 4:**

3. The rejection of claims 2-4, 6-14, and 17 under 35 U.S.C. 112, first paragraph, is maintained. Applicant's amendments and arguments, if entered, would overcome the portion of the rejection related to the indefinite language. However, the rejection of claims 11 and 12 as nonenabling for *in vivo* administration is maintained. Applicant's arguments have been fully considered but they are not persuasive.

Applicant's proposed amendment of claim 12 to delete "pharmaceutical" from line 1 would not overcome the rejection because applicant clearly states on the record that the claim scope still includes pharmaceutical compositions. Furthermore, claim 12 still recites a pharmaceutically acceptable carrier. Applicant's arguments regarding this rejection have been previously addressed; no new arguments are presented in the response filed 11/13/2000.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Brumback whose telephone number is (703) 306-3220. If the examiner can not be reached, inquiries can be directed to Supervisory Patent Examiner Anthony Caputa whose telephone number is (703) 308-3995. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Brenda Brumback, Art Unit 1642 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1642 FAX telephone number is (703)-305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.

Brenda Brumback  
November 21, 2000

  
ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
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Creation date: 10-31-2003  
Indexing Officer: KHALL - KIM HALL  
Team: OIPEBackFileIndexing  
Dossier: 09011910

Legal Date: 01-08-2001

No.	Doccode	Number of pages
1	LET.	4
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3	CLM	1
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Total number of pages: 16

Remarks:

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